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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RSPE AUDIO SOLUTIONS, INC.,	)	Case No. CV 12-06863 DDP (PJWx)
a California corporation,	)	
	)	
Plaintiff,	)	
	)	<b>ORDER GRANTING DEFENDANT'S MOTION</b>
v.	)	<b>TO DISMISS</b>
	)	
VINTAGE KING AUDIO, INC.,	)	
et al.,	)	
	)	
Defendants.	)	[Dkt. Nos. 36, 41]

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Presently before the court is Defendant Vintage King Audio Inc. ("Vintage King")'s Motion to Dismiss Plaintiff's Second, Third and Fourth causes of action. Defendants Chris Bolitho and Robert Alexander join in the motion. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order.

**I. Background**

Plaintiff RSPE Audio Solutions, Inc. ("RSPE") provides professional audio and video equipment and consulting and engineering services to its clients. (Second Amended Complaint ("SAC") ¶ 10.) RSPE maintains confidential information, such as

1 customer lists, employee compensation terms, deal proposals, and  
2 the like, that RPSE alleges constitute trade secrets. (SAC ¶ 12.)

3 Defendants Bolitho and Alexander were, until May 2012, RSPE  
4 employees. (SAC ¶ 15.) Bolitho had special access to RSPE's  
5 confidential information. (SAC ¶ 16.) RSPE alleges that on April  
6 19, 2012, Bolitho and Alexander accessed RSPE systems from  
7 unauthorized computers and made unauthorized copies of RSPE's trade  
8 secrets. (SAC ¶ 17.) RSPE further alleges that Bolitho and  
9 Alexander used RSPE secrets to contact and solicit RSPE customers  
10 for the benefit of competitor Vintage King. (SAC ¶ 18.)

11 The SAC further alleges that Bolitho and Alexander engaged in  
12 other wrongful acts ostensibly unrelated to the theft of trade  
13 secrets. (SAC ¶¶ 19-27). The SAC alleges, for example, that  
14 Bolitho and Alexander referred to RSPE proposed offer terms to  
15 draft bid sheets for Vintage King. (SAC ¶ 19.) Bolitho also  
16 tampered with RSPE e-mail systems to divert messages to his  
17 personal e-mail address, obtain duplicates of customer support  
18 "live chat" transcripts, intentionally overstated RSPE prices so as  
19 to sabotage RSPE deals, and regularly collaborated with Vintage  
20 King on plans to divert customers to Vintage King. (SAC ¶¶ 20-23.)  
21 RSPE further alleges that Bolitho hijacked its eBay store and  
22 directed RSPE's online business to Vintage King. (SAC ¶ 25.)

23 In early May 2012, Bolitho and Alexander resigned from RSPE  
24 and went to work for Vintage King. (SAC ¶ 8.) Bolitho continued  
25 his wrongful acts as a Vintage King employee and committed  
26 additional bad acts, such as changing the passwords to RSPE's  
27 Amazon.com account and deleting RSPE's Amazon sale listings. (SAC  
28 ¶¶ 8, 21-22, 25-26.)

1 RSPE filed suit against Bolitho, Alexander, and Vintage King  
2 in California state court. RSPE's SAC alleges six causes of  
3 action, including the First Cause of Action for Misappropriation of  
4 Trade Secrets in violation of California's Uniform Trade Secrets  
5 Act ("CUTSA"), Civil Code Section 3426, et seq. The Second, Third,  
6 and Fourth Causes of Action allege intentional interference with  
7 prospective economic advantage, unfair business practices, and  
8 aiding and abetting misappropriation of trade secrets,  
9 respectively, against all Defendants.<sup>1</sup> Bolitho and Alexander  
10 removed to this court. Vintage King, joined by Bolitho and  
11 Alexander, moved for judgment on the pleadings as to the Second,  
12 Third, and Fourth Causes of Action of RSPE's First Amended  
13 Complaint. This court granted the motion, with leave to amend.  
14 RSPE then refined its claims and filed the SAC. Vintage King,  
15 again joined by Bolitho and Alexander, now moves to dismiss the  
16 SAC's Second, Third, and Fourth Causes of Action.

## 17 **II. Legal Standard**

18 A complaint will survive a motion to dismiss when it contains  
19 "sufficient factual matter, accepted as true, to state a claim to  
20 relief that is plausible on its SACe." Ashcroft v. Iqbal, 556 U.S.  
21 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
22 570 (2007)). When considering a Rule 12(b)(6) motion, a court must  
23 "accept as true all allegations of material fact and must construe  
24 those facts in the light most favorable to the plaintiff." Resnick  
25 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint

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27 <sup>1</sup> The SAC also alleges two additional causes of action not at  
28 issue here. Though not pertinent here, the court notes that Fifth  
and Sixth causes of action are inconsistently numbered in the  
caption and body of the SAC.

1 need not include "detailed factual allegations," it must offer  
2 "more than an unadorned, the-defendant-unlawfully-harmed-me  
3 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or  
4 allegations that are no more than a statement of a legal conclusion  
5 "are not entitled to the assumption of truth." Id. at 679. In  
6 other words, a pleading that merely offers "labels and  
7 conclusions," a "formulaic recitation of the elements," or "naked  
8 assertions" will not be sufficient to state a claim upon which  
9 relief can be granted. Id. at 678 (citations and internal  
10 quotation marks omitted).

11 "When there are well-pleaded factual allegations, a court  
12 should assume their veracity and then determine whether they  
13 plausibly give rise to an entitlement of relief." Id. at 679.  
14 Plaintiffs must allege "plausible grounds to infer" that their  
15 claims rise "above the speculative level." Twombly, 550 U.S. at  
16 555. "Determining whether a complaint states a plausible claim for  
17 relief" is a "context-specific task that requires the reviewing  
18 court to draw on its judicial experience and common sense." Iqbal,  
19 556 U.S. at 679.

### 20 **III. Discussion**

21 As explained in the court's earlier order, California's  
22 Uniform Trade Secrets Act ("CUTSA") preempts, displaces, and  
23 supercedes all "claims based on the same nucleus of facts as trade  
24 secret misappropriation." K.C. Multimedia, Inc. v. Bank of America  
25 Tech. & Operations, Inc., 171 Cal. App. 4th 939, 962 (2009).  
26 CUTSA, therefore, "provides the exclusive civil remedy for conduct  
27 falling within its terms . . . ." Silvaco Data Sys. v. Intel  
28

1 Corp., 184 Cal. App. 4th 210, 236 (2010). CUTSA does not affect  
2 contractual remedies or "civil remedies that are not based upon

3 The SAC is not a model of clarity. RSPE's First Cause of  
4 Action under CUTSA alleges that "Defendants' conduct as alleged in  
5 this Complaint constitutes misappropriation of trade secrets  
6 pursuant to [CUTSA]." (SAC ¶ 29.) Plaintiff acknowledges that the  
7 Second, Third, and Fourth causes of action all incorporate  
8 misappropriation of trade secrets allegations, and that the caption  
9 of the SAC incorporates misappropriation of trade secrets into the  
10 Fourth Cause of Action. Plaintiff ascribes these fatal references  
11 to trade secrets to "clerical errors" resulting from its amendment  
12 of the FAC. Plaintiff has indicated that it desires to strike  
13 these errors from the SAC.

14 Putting aside these avowed errors, the SAC alleges that  
15 Defendants "stole various items of RSPE's property, some of which  
16 are trade secrets." (SAC ¶ 8 (emphasis original).) The SAC then  
17 describes the "theft of trade secrets," and "other wrongful acts"  
18 in separate sections. (SAC ¶¶ 15-18, 19-27.) The SAC identifies  
19 alleged trade secrets such as RSPE's customer list, client contact  
20 information, employee compensation terms, clients' order histories,  
21 customer preferences, pricing, and "a database of information  
22 regarding RSPE's business relationships."<sup>2</sup> (SAC ¶¶ 12,17.) The  
23 SAC does not, however, specifically allege that Defendants "stole"  
24 any particular item of non-trade secret property or allege a cause  
25 of action for conversion of any tangible or intangible non-trade

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27 <sup>2</sup> At argument, Plaintiff appeared to suggest that the SAC  
28 references a single trade secret, RSPE's customer list database.  
That suggestion is at odds with the plain language of the SAC.

1 secret property. See Bryant v. Mattel, Inc., No. CV 4-9049 DOC,  
2 2010 WL 3705668 at \*22 (C.D. Cal. Aug. 2, 2010) ("Intangible  
3 property can be converted.").

4 The Second Cause of Action for Intentional Interference with  
5 Prospective Economic Advantage alleges that Defendants sabotaged  
6 RSPE's access to its clients and to its own online storefronts,  
7 interfered with pending transactions, deliberately misquoted RSPE's  
8 prices, and induced clients to patronize Vintage King rather than  
9 RSPE (SAC ¶ 39.)<sup>3</sup> Plaintiff's opposition clarifies that the Second  
10 Cause of Action is based upon Bolitho and Alexander's alleged  
11 misappropriation of intangible information, "e.g. emails, deal  
12 proposals, and RSPE's eBay store." (Opp. at 6; SAC ¶ 39.)

13 Generally, a property rights where there is (1) a definable  
14 interest that (2) is capable of exclusive possession and to which  
15 (3) a putative owner has established a legitimate claim to  
16 exclusivity. Kremen v. Cohen, 337 F.3d 1024, 1030 (9th Cir. 2003).  
17 "[I]nformation that does not fit [the] definition [of a trade  
18 secret], and is not made property by some provision of positive  
19 law, belongs to no one, and cannot be converted or stolen."  
20 Silvaco, 184 Cal.App.4th at 239 n.22. In the CUTSA preemption  
21 context, the alleged property right over information must also fall  
22 outside the realm of trade secrets law. Silvaco, 184 Cal.App.4th  
23 at 239. Even proprietary information that does not constitute a  
24 trade secret may fall within CUTSA's ambit where the basis of the  
25 property interest is rooted in the information's private nature.

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27 <sup>3</sup> The Third and Fourth Causes of Action incorporate these same  
28 allegations. This order's discussion of the Second Cause of action  
therefore also applies to the Third and Fourth Causes of Action.

1 Sunpower Corp. v. SolarCity Corp., No. 12-CV-694 LHK, 2012 WL  
2 6160472 at \*4-6 (N.D. Cal. Dec. 11, 2012); Bryant, 2010 WL at \*21.

3 Vintage King argues that, despite Plaintiff's assertion that  
4 the "other wrongful acts" described in the Second Cause of Action  
5 are unrelated to trade secrets, the acts are based on the same  
6 nucleus of facts as the CUTSA claim, and are therefore preempted.  
7 Plaintiff cursorily responds that it has articulated a non-trade  
8 secret property interest in the information described in the Second  
9 Cause of Action by alleging that Bolitho misappropriated the  
10 information while employed at RSPE. (Opp. at 6; SAC ¶ 19.)  
11 As an initial matter, it is unclear to the court how Bolitho's  
12 employment status alone gives rise to any property rights,  
13 particularly with respect to eBay and Amazon storefronts that would  
14 not appear to fall under RSPE's exclusive control.

15 More importantly, as Defendants contend, the acts underlying  
16 the Second, Third, and Fourth causes of action arise from the same  
17 nucleus of facts as the trade secret claims. This court generally  
18 agrees with the Bryant court that CUTSA preemption questions are  
19 better addressed at summary judgment. That is, in determining  
20 whether a particular claim arises out of the theft of confidential  
21 or proprietary information, the better approach is to analyze what  
22 the information is, how it was appropriated, and what interest was  
23 harmed before deciding whether the allegedly misappropriated  
24 information was made property by some provision of law beyond the  
25 scope of trade secrets law. Bryant, 2010 WL at \*22.

26 In some cases, however, "where a plaintiff includes only vague  
27 allegations regarding the nature of purportedly non-trade secret  
28 proprietary information, a determination of CUTSA preemption may be

possible on a motion to dismiss." Sunpower, 2012 WL at \*14. Such is the case here. The information and conduct described in the Second Cause of Action appears to be closely related, if not identical, to that listed in the First Cause of Action under CUTSA. The CUTSA claim, for example, alleges that Defendants stole trade secrets such as pricing data and customer preferences. The allegations in the Second Cause of Action, such as that Defendants "interfered with deal proposals" and "over-bid price quotes," are bound up with, if not directly premised upon, Defendants' use of the trade secrets identified in Plaintiff's CUTSA claim. Even if the property identified in the Second through Fourth causes of action does not meet the definition of a trade secret, the property appears to be confidential information such as e-mails and passwords. To the extent the confidential nature of this information serves as the basis for RSPE's proprietary interest in it, RSPE's claims are pre-empted by CUTSA. Sunpower, 2012 WL 6160472 at \*4-6 Because the conduct underpinning the non-trade secret causes of action arises out of the same nucleus of facts as the theft of trade secrets, CUTSA preempts the Second, Third, and Fourth Causes of action.

#### **IV. Conclusion**

For the reasons stated above, Defendant's Motion for Judgment on the Pleadings is GRANTED. Plaintiff having now amended its claims three times, without success, the Second, Third, and Fourth Causes of action are DISMISSED with prejudice.

IT IS SO ORDERED.

Dated: March 18, 2013

  
DEAN D. PREGERSON  
United States District Judge